

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In re: Methyl Tertiary Butyl Ether (“MTBE”) : Master File No. 1:00-1898
Products Liability Litigation : MDL No. 1358 (SAS)
: M21-88

This Document Relates To: : The Honorable Shira A. Scheindlin
Orange County Water District v. Unocal :
Corporation, et al., Case No. 04 Civ. 4968 :
(SAS). :
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**DEFENDANTS' LOCAL RULE 56.1 STATEMENT IN SUPPORT
OF FURTHER SUPPLEMENTAL BRIEF ON STATUTE OF LIMITATIONS**

Defendants respectfully submit the Local Rule 56.1 statement in support of their further supplemental memorandum in support of summary judgment motion based on statute of limitations. This statement supplements, and does not supersede, prior Local Rule 56.1 statements submitted by defendants. This statement is organized to respond to plaintiff Orange County Water District's (the "District" or OCWD) accrual table, dated March 13, 2009.

PLUME NUMBER AND STATION ADDRESS	OCWD'S ACCRUAL DATES AND SUPPORTING ASSERTIONS	UNDISPUTED FACTS SUPPORTING DEFENDANTS' FURTHER SUPPLEMENTAL MEMORANDUM
PLUME NO. 1 NB-TAMD	<p>1. The District bases its accrual dates for six of the stations in its Plume 1 (Arco #1887, Shell #204359403, Texaco #121681, Texaco #8520/121608, Unocal #5376, and Unocal #5399) on an alleged MTBE detection in production well NB-TAMD on August 3, 2005. (Mar. 13, 2009, Letter from M. Axline to M. Heartney,¹ citing Plaintiff Orange County Water District's Second Supplemental Responses to Defendants' Preliminary Interrogatories re Standing, May 2, 2008,² at Ex. 1A attached thereto.) The District bases its accrual dates for the remaining three stations in Plume 1 (Exxon #4283, G&M Oil #4, Mobil #18-G6B) on detections in off-site monitoring wells at these stations.</p>	<p>1. Plume 1 was previously addressed in the 2008 round of supplemental briefing, and Defendants' undisputed facts supporting their position regarding this plume can be found in their 56.1 statement submitted in that briefing at ¶¶ 1-12.</p>
Exxon #7-4283/ Chevron #208554 8980 Warner Avenue, Fountain Valley	<p>2. Claims alleged to accrue on May 5, 2005. (Feb. 6, 2009, Letter from M. Axline to The Hon. Shira Scheindlin.³) This date is based on an MTBE detection in offsite monitoring well MW-13i. (Mar. 13, 2009, Letter from M. Axline to M. Heartney, citing OCWD-MTBE-001-257810.)</p>	<p>2. The MTBE detection in well MW-13i on which OCWD's date is based was at 5.6 ppb. ((Further Supplemental Declaration of William Costley ("Costley 2009 Decl.") Ex. 1A.) MTBE has not been detected in any subsequent sampling event at this well. (See EXMO_4283_019716; OCWD-MTBE-001-257810.)</p> <p>Prior to May 6, 2000, MTBE was detected at this station in offsite monitoring well MW-8 at levels above the Secondary MCL, with a peak concentration of 18 ppb. (Costley 2009 Decl. Ex. 1A.)</p>

¹ For the convenience of the Court, this document is attached as Exhibit 2 to the Further Supplemental Declaration of James J. Finsten ("Finsten 2009 Decl.").

² For the convenience of the Court, this document is attached as Exhibit 13 to the Finsten 2009 Decl.

³ For the convenience of the Court, this document is attached as Exhibit 5 to the Finsten 2009 Decl.

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Arco #1887 16742 Beach Blvd. Huntington Beach	3. Claims alleged to accrue on August 3, 2005. (Feb. 6, 2009, Letter from M. Axline to The Hon. Shira Scheindlin.) This date is based on an MTBE detection in production well NB-TAMD. (Mar. 13, 2009, Letter from M. Axline to M. Heartney, citing Plaintiff Orange County Water District's Second Supplemental Responses to Defendants' Preliminary Interrogatories re Standing, May 2, 2008, at Ex. 1A attached thereto.)	<p>3. The MTBE detection in well NB-TAMD on which OCWD's date is based was at 0.12 ppb. (Costley 2009 Decl. Ex. 1B.) However, under the District's accrual criteria, accrual may rest on an MTBE detection in a water production well <i>only</i> "[f]or stations where no off-site monitoring wells were installed." (Feb. 6, 2009, Letter from M. Axline to The Hon. Shira Scheindlin.)</p> <p>Prior to May 6, 2000, MTBE was detected at this station in at least three off-site monitoring wells at levels greater than the California Secondary MCL: BC-1, MW-15, and MW-17 (Costley 2009 Decl. Ex. 1B), as follows:</p> <p>MTBE was detected in BC-1 on December 28, 1999, at 6.3 ppb. (AROCWD188705320.) MTBE was detected in MW-15 on December 28, 1999 at 9.2 ppb, and on March 14, 2000 at 13 ppb. (AROCWD188705312.) MTBE was detected in MW-17 on December 3, 1998 at 48 ppb and March 9, 1999 at 14 ppb. (AROCWD188705313; <i>see also</i> OCWD-MTBE-001-261031.) During the Focus Plume depositions, the District's designated witness David Bolin cited MTBE detections in these wells as purportedly showing that MTBE had "escaped remediation." (Bolin Dep.⁴ 3058:5-3059:5; 3071:21-3073:15.)</p>
G&M Oil #4 16990 Beach Blvd. Huntington Beach	4. Claims initially alleged to accrue on August 15, 2001. (Feb. 6, 2009, Letter from M. Axline to The Hon. Shira Scheindlin.) Subsequently, the date of accrual	<p>4. The MTBE detection in well W-25d on which OCWD's date is based was at 5.1 ppb. (Costley 2009 Decl. Ex. 1A.)</p> <p>Prior to May 6, 2000, MTBE was</p>

⁴ For the convenience of the Court, the cited testimony of David Bolin is attached as Exhibit 10 to the Finsten 2009 Decl.

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	<p>was changed to September 12, 2001. (Mar. 13, 2009, Letter from M. Axline to M. Heartney.) This date is based on an MTBE detection in offsite monitoring well W-25d. (<i>Id.</i>, citing OCWD-MTBE-001-255899.)</p>	<p>detected at this station in at least eight off-site monitoring wells at levels greater than the California Secondary MCL: W-11, W-16, W-17, W-18, W-19, W-20, W-21, and W-22, as follows.</p> <p>MTBE was detected in W-11 on March 15, 1998 at 2,950 ppb, the only time this well is reported to have been tested for MTBE before May 6, 2000. (OCWD-MTBE-001-255850.) MTBE was detected in W-16 on March 2, 1997 at 200 ppb, and in all eleven subsequent testing event through May 6, 2000. (OCWD-MTBE-001-255869-70.) MTBE was detected in W-17 on September 17, 1997 at 4,360 ppb, and in all nine subsequent testing event through May 6, 2000. (OCWD-MTBE-001-255872-73.) MTBE was detected in W-18 on September 21, 1997 at 48 ppb, and in eight of the nine subsequent quarterly monitoring events through May 6, 2000. (OCWD-MTBE-001-255875-76.) MTBE was detected in W-19 on March 15, 1998 at 54 ppb, and in every subsequent quarterly monitoring event in which the well was tested for MTBE through May 6, 2000. (OCWD-MTBE-001-255878.) MTBE was detected in W-20 on September 21, 1997 at 5.9 ppb, and was detected in four subsequent sampling events through May 6, 2000. (OCWD-MTBE-001-255880-81.) MTBE was detected in W-21 on September 21, 1997 at 102 ppb, and was detected in seven subsequent sampling events through May 6, 2000, peaking at 2,080 ppb on May 17, 1998. (OCWD-MTBE-001-255883-84.)</p>
Texaco #8520/121608 8520 Warner Ave.	5. Claims alleged to accrue on August 3, 2005. (Feb. 6, 2009, Letter from M. Axline to The Hon. Shira Scheindlin.) This date is	5. The MTBE detection in well NB-TAMD on which OCWD's date is based was at 0.12 ppb. (Costley 2009 Decl. Ex. 1B.) However, under the

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Fountain Valley	<p>based on an MTBE detection in production well NB-TAMD. (Mar. 13, 2009, Letter from M. Axline to M. Heartney, citing Plaintiff Orange County Water District's Second Supplemental Responses to Defendants' Preliminary Interrogatories re Standing, May 2, 2008, at Ex. 1A attached thereto.)</p>	<p>District's accrual criteria, accrual may rest on an MTBE detection in a water production well <i>only</i> "[f]or stations where no off-site monitoring wells were installed." (Feb. 6, 2009, Letter from M. Axline to The Hon. Shira Scheindlin.)</p> <p>Prior to May 6, 2000, MTBE was detected at this station in at least two off-site monitoring wells at levels greater than the California Secondary MCL: MW-9 and MW-10, as follows:</p> <p>MTBE was detected in MW-9 at 7.3 ppb on August 5, 1998, and at continuously higher concentrations up to 660 ppb through May 6, 2000. (OCWD-MTBE-001-254959.) MTBE was detected in MW-10 at a level of 2,610 ppb on March 20, 1998, and at all subsequent testing events through May 6, 2000. (<i>Id.</i>)</p>
Mobil #18-G6B 9024 Warner Ave. Fountain Valley	<p>6. Claims alleged to accrue on April 2, 2003. (Feb. 6, 2009, Letter from M. Axline to The Hon. Shira Scheindlin.) This date is based on an MTBE detection in offsite monitoring well MW-6S. (Mar. 13, 2009, Letter from M. Axline to M. Heartney, citing OCHCA-MTBE-081101.)</p>	<p>6. The MTBE detection in well MW-6S on which OCWD's date is based was at 14.4 ppb. (Costley 2009 Decl. Ex. 1D.) MTBE was non-detect at this well for the next two quarters, and was non-detect or detected below the Secondary MCL in nine of the twelve sampling events in the three years following the April 2, 2003 detection. (EXMO_18G6B_013434-35; OCHCA-MTBE-081101.)</p> <p>Prior to May 6, 2000, MTBE was detected at this station in on-site monitoring wells from at least November 7, 1999, at 34,000 ppb. (See Finsten 2008 Supp. Decl., Ex. 13.)</p>
Unocal #5376 8971 Warner Ave. Huntington	<p>7. Claims alleged to accrue on February 8, 2005. (Feb. 6, 2009, Letter from M. Axline to The Hon. Shira Scheindlin.) Subsequently,</p>	<p>7. The MTBE detection in well NB-TAMD on which OCWD's date is based was at 0.12 ppb. (Costley 2009 Decl. Ex. 1B.) However, under the</p>

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Beach	<p>the date of accrual was changed to August 3, 2005. (Mar. 13, 2009, Letter from M. Axline to M. Heartney.) This date is based on an MTBE detection in production well NB-TAMD. (Mar. 13, 2009, Letter from M. Axline to M. Heartney, citing Plaintiff Orange County Water District's Second Supplemental Responses to Defendants' Preliminary Interrogatories re Standing, May 2, 2008, at Ex. 1A attached thereto.)</p>	<p>District's accrual criteria, accrual may rest on an MTBE detection in a water production well <i>only</i> "[f]or stations where no off-site monitoring wells were installed." (Feb. 6, 2009, Letter from M. Axline to The Hon. Shira Scheindlin.)</p> <p>Prior to May 6, 2000, MTBE was detected at this station in at least 5 offsite monitoring wells: MW-9, MW-10, MW-13, MW-14, and MW-15, as follows:</p> <p>MTBE was first detected in well MW-9 at 89 ppb on December 27, 1996, and in another subsequent testing event before May 6, 2000, with a high detection of 89 ppb. (OCWD-MTBE-001-260076.) MTBE was first detected in well MW-10 at 63 ppb on August 31, 1998, and in two subsequent sampling events prior to May 6, 2000, with a high detection of 63 ppb. (OCWD-MTBE-001-260077.) MTBE was first detected in well MW-13 at 26 ppb on December 15, 1997, at 180 ppb on February 8, 1999, and in three of the four subsequent sampling events prior to May 6, 2000, with a high detection of 220 ppb. (OCWD-MTBE-001-260080.) MTBE was first detected in well MW-14 at 51 ppb on July 1, 1996, at 81 ppb on October 1, 1997, at 990 ppb on December 11, 1998, and in four of the subsequent five sampling events before May 6, 2000, with a high detection of 990 ppb. (OCWD-MTBE-001-260082.) MTBE was detected at MW-15 on December 27, 1996 at a level of 140 ppb and in another testing event prior to May 6, 2000. (OCWD-MTBE-001-260084.)</p>
Shell #204359403	8. Claims alleged to accrue on August 3, 2005. (Feb. 6, 2009,	8. The MTBE detection in well NB-TAMD on which OCWD's date is

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8471 Warner Ave. Huntington Beach	Letter from M. Axline to The Hon. Shira Scheindlin.) This date is based on an MTBE detection in production well NB-TAMD. (Mar. 13, 2009, Letter from M. Axline to M. Heartney, citing Plaintiff Orange County Water District's Second Supplemental Responses to Defendants' Preliminary Interrogatories re Standing, May 2, 2008, at Ex. 1A attached thereto.)	based was at 0.12 ppb. (Costley 2009 Decl. Ex. 1D.) Prior to May 6, 2000, MTBE was detected at this station in on-site monitoring wells from at least August 12, 1998, at a level of 312 ppb. (See Finsten 2008 Supp. Decl., Ex. 15.)
Texaco #121681 9475 Warner Ave. Fountain Valley	9. Claims alleged to accrue on September 1, 2000. (Feb. 6, 2009, Letter from M. Axline to The Hon. Shira Scheindlin.) Subsequently, the date of accrual was changed to August 3, 2005. (Mar. 13, 2009, Letter from M. Axline to M. Heartney.) This date is based on an MTBE detection in production well NB-TAMD. (Mar. 13, 2009, Letter from M. Axline to M. Heartney, citing Plaintiff Orange County Water District's Second Supplemental Responses to Defendants' Preliminary Interrogatories re Standing, May 2, 2008, at Ex. 1A attached thereto.)	9. The MTBE detection in well NB-TAMD on which OCWD's date is based was at 0.12 ppb. (Costley 2009 Decl. Ex. 1D.) Prior to May 6, 2000, MTBE was detected at this station in on-site monitoring wells from at least March 27, 2000, at a level of 41,000 ppb. (<i>Id.</i>)
Unocal #5399 9525 Warner Ave. Fountain Valley	10. Claims alleged to accrue on August 3, 2005. (Feb. 6, 2009, Letter from M. Axline to The Hon. Shira Scheindlin.) The date is based on an MTBE detection in production well NB-TAMD. (Mar. 13, 2009, Letter from M. Axline to M. Heartney, citing Plaintiff Orange County Water District's Second Supplemental Responses to Defendants' Preliminary Interrogatories re Standing, May 2, 2008, at Ex. 1A attached thereto.)	10. The MTBE detection in well NB-TAMD on which OCWD's date is based was at 0.12 ppb. (Costley 2009 Decl. Ex. 1D.) Prior to May 6, 2000, MTBE was detected at this station in on-site monitoring wells from at least November 20, 1996, at a level of 2,000 ppb. (<i>Id.</i> ; Decl. of Melanie Hanson Sartoris, March 9, 2006 ("Sartoris 2006 Decl.") Ex. 15.)

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PLUME NO. 2 MCWD-3B MCWD-5 MCWD-7 IRWD-7	<p>11. The District bases its accrual date for one station in plume 2 (Arco #6131) on an alleged MTBE detection in production well MCWD-5 on August 2, 2005. (Mar. 13, 2009, Letter from M. Axline to M. Heartney, citing Plaintiff Orange County Water District's Second Supplemental Responses to Defendants' Preliminary Interrogatories re Standing, May 2, 2008, at Ex. 1A attached thereto.) The District bases its accrual dates for the remaining two stations in Plume 2 (Mobil #18-HDR, Mobil #18-JMY) on detections in off-site monitoring wells at these stations.</p>	<p>11. Plume 2 was previously addressed in the 2008 round of supplemental briefing, and Defendants' undisputed facts supporting their position regarding this plume can be found in their 56.1 statement submitted in that briefing at ¶¶ 13-19.</p>
Mobil #18-HDR 3195 Harbor Blvd. Costa Mesa	<p>12. Claims alleged to accrue on September 1, 2004. (Feb. 6, 2009, Letter from M. Axline to The Hon. Shira Scheindlin.) This date is based on an MTBE detection in offsite monitoring well MW-16B. (Mar. 13, 2009, Letter from M. Axline to M. Heartney, citing OCHCA-MTBE-013931 and OCWD-MTBE-001-182767.)</p>	<p>12. The MTBE detection in well MW-16B on which OCWD's date is based was at 18.5 ppb. (Costley 2009 Decl. Ex. 1A.)</p> <p>Prior to May 6, 2000, MTBE was detected at this station in eight off-site monitoring wells at levels greater than the California Secondary MCL: MW-5A, MW-5B, MW-6A, MW-7, MW-9A, MW-9B, MW-10A, and MW-10B, as follows:</p> <p>MTBE was detected in MW-5A on February 29, 1996 at 51,000 ppb, and in 13 of the 14 subsequent sampling events prior to May 6, 2000 at levels above 5 ppb, peaking at 71,000 ppb. (EXMO_18HDR_022189; OCWD-MTBE-001-182752.) MTBE was detected in MW-5B on February 29, 1996 at 40,000 ppb, and in five subsequent sampling events prior to May 6, 2000 at levels above 5 ppb, peaking at 67,000 ppb. (EXMO_18HDR_022190-91; OCWD-MTBE-001-182753-54.) MTBE was detected in MW-6A on February 29,</p>

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		<p>1996 at 12 ppb, and in four subsequent sampling events prior to May 6, 2000 at levels above 5 ppb, peaking at 31 ppb. (EXMO_18HDR_022192; OCWD-MTBE-001-182755.) MTBE was detected in MW-7 on February 29, 1996 at 4,200 ppb, and in six subsequent sampling events prior to May 6, 2000 at levels above 5 ppb, peaking at 4,700 ppb. (EXMO_18HDR_022194; OCWD-MTBE-001-182757.) MTBE was detected in MW-9A on May 29, 1996 at 3,200 ppb, and in eleven subsequent sampling events prior to May 6, 2000 at levels above 5 ppb, peaking at 5,400 ppb. (EXMO_18HDR_022197-98; OCWD-MTBE-001-182761.) MTBE was detected in MW-9B on May 29, 1996 at 4,400 ppb, and in nine subsequent sampling events prior to May 6, 2000 at levels above 5 ppb, peaking at 6,000 ppb. (EXMO_18HDR_022199; OCWD-MTBE-001-182762.) MTBE was detected in MW-10A on February 29, 1996 at 38,000 ppb (peak level), and in twelve of the next fourteen sampling events prior to May 6, 2000 at levels above 5 ppb. (EXMO_18HDR_022200; OCWD-MTBE-001-182763.) MTBE was detected in MW-10B on February 29, 1996 at 6,300 ppb, and in thirteen of the next fourteen sampling events prior to May 6, 2000 at levels above 5 ppb, peaking at 55,000 ppb. (EXMO_18HDR_022201; OCWD-MTBE-001-182764-65.)</p> <p>In deposition testimony, David Bolin (OCWD) testified that MTBE had "escaped" remediation at this station based on off-site detections in seven of these off-site wells. (Bolin Dep.</p>